

## **IEERB Practitioner's Guide to Bargaining & Impasse**

The Indiana Education Employment Relations Board is a neutral agency that oversees relations between public school teachers and the schools they serve.

Indiana Code ("IC") Article 20-29 establishes the framework for teacher collective bargaining in Indiana, which is supplemented by IEERB's administrative rules, 560 Indiana Administrative Code ("IAC") 2. IEERB staff has developed this Guide to provide additional guidance and tips to practitioners regarding teacher collective bargaining.

**The following Guide is for GUIDANCE ONLY on collective bargaining and impasse under IC 20-29 and 560 IAC 2. IEERB is a neutral agency and cannot provide legal advice; nor does this Guide bind IEERB or its Board in any way.** This Guide is not intended to take the place of careful review of IC 20-29 and 560 IAC 2 or as a substitute for legal advice. Some of this Guide may not be relevant to a school employer or exclusive representative based on the ratification date of a current collective bargaining agreement. This Guide may not reflect the most recent agency or court decisions. At the time this Guide was issued, the following Board Orders were appealed and are pending in court: *Nettle Creek School Corporation*, F-11-02-8305, pending in the Indiana Court of Appeals, Cause No. 49A02-1402-PL-78; *Carmel Clay Schools*, F-12-01-3060, pending in Marion County Superior Court, Cause No. 49D05-1312-PL-045234; *Jay School Corporation*, F-13-01-3945, pending in Marion County Superior Court, Cause No. 49D02-1402-PL-003406. It is recommended that you check with IEERB on the status of these cases before relying on them.

This Guide is IEERB-only guidance. Guidance or information from other agencies involved with CBAs or collective bargaining have been provided for information only and may not reflect the views of IEERB. Please note that this Guide pertains to teacher collective bargaining laws and rules; however, the parties are still subject to other state and federal laws and rules not mentioned or analyzed here.

**This Guide supersedes prior IEERB guidance on bargaining and impasse.** IEERB may, from time to time, issue updates. Please check IEERB's website at **[www.in.gov/ieerb](http://www.in.gov/ieerb)** for applicable law and rules, the current bargaining timelines, LBO requirements, and additional guidance. You also can register for free IEERB updates through the IEERB Bulletin.

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## **Overview**

Bargaining collectively is the performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith concerning the mandatory subjects of bargaining; and to execute a written contract, known as a collective bargaining agreement ("CBA"), relating to the settlement of bargaining subjects. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other. Informal negotiations may be held prior to August 1. However, formal collective bargaining between a school employer and the exclusive representative shall not begin before August 1.<sup>1</sup>

IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA to IEERB. Within 15 days of the Declaration of Impasse, IEERB shall appoint a mediator. Mediation will consist of 1-3 sessions and last up to 30 days. Mediation will end in the submission to IEERB of a ratified contract, or the exchange of Last, Best Offers ("LBOs"). Within 15 days of the end of an unsuccessful mediation, IEERB will appoint a fact-finder. The fact-finder will have up to 15 days to investigate the parties' LBOs and pick one to be the parties' CBA. The parties will then have 30 days to appeal the fact-finder's decision to the IEERB Board. Check IEERB's website for the most recent timeline.

## **Research**

IEERB's research division provides public access to collective bargaining agreements as well as data relevant to collective bargaining. IEERB collects collective bargaining data (salary, wages, and salary and wage related benefits) and collective bargaining agreements through the Gateway portal and publishes these data through Gateway Report Builder, which can be accessed at [https://gateway.ifionline.org/report\\_builder](https://gateway.ifionline.org/report_builder). School employers are responsible for submitting their data, and IEERB does not verify the data.

IEERB Search is an advanced search engine and document retrieval system that contains collective bargaining agreements, IEERB representation and unit determinations, unfair labor practice decisions, fact-finding cases, and relevant opinions from the Attorney General. IEERB Search is available at <https://ieerbsearch.ieerb.in.gov/login.aspx>.

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<sup>1</sup> Specifically, IC 20-29-6-12 provides that parties shall not formally bargain before August 1 in the first year of the state budget biennium; or August 1 in the second year of the state budget biennium if either the parties agreed to a one-year contract during the first year of the state budget biennium or the contract provides for renegotiating certain financial items during the second year of a two-year contract.

## **Collective Bargaining**

### **I. Overview**

The mandatory subjects of bargaining listed in IC 20-29-6-4 are salary, wages, and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11. Salary and wages include the amounts of pay increases available to employees under the compensation model adopted under IC 20-28-9-1.5, but do not include the teacher evaluation procedures and criteria, or any components of the teacher evaluation plan, rubric, or tool.

IC 20-29-6-4.5 and -4.7 provide that the following are impermissible subjects of bargaining: school calendar; teacher dismissal procedures and criteria; restructuring options; the school's ability to work with educational entities regarding postsecondary or dual credits; teacher evaluation procedures and criteria; and any subject not required to be bargained. The IEERB Board has found that while teachers cannot bargain for additional pay (above their salaries) for performing their teaching duties, teachers and schools can and must bargain pay for work outside a teacher's duties. *See Nettle Creek Sch. Corp.*, F-11-02-8305 at 8-9 (IEERB Bd. 2012), *on appeal*, Cause No. 49A02-1402-PL-78; *Carmel Clay Schs.*, F-12-01-3060 at 3-4 (IEERB Bd. 2013), *on appeal*, Cause No. 49D05-1312-PL-045234; *Jay Sch. Corp.*, F-13-01-3945 at 21-22 (IEERB Bd. 2013), *on appeal*, Cause No. 49D02-1402-PL-003406. Additionally, it is unlawful for a school employer to enter into any agreement that would place the employer in a position of deficit financing.

Beyond simply bargaining, the parties must reduce any agreement to writing. CBAs must include agreed-upon mandatory subjects of bargaining (thus, any side agreements or memoranda of understanding (MOUs) regarding subjects of bargaining must be attached to, and are considered part of, the CBA). For example, wage payment agreements must be attached to CBAs. *See Jay Sch. Corp.*, F-13-01-3945 at 20 (IEERB Bd. 2013), *on appeal for other reasons*, Cause No. 49D02-1402-PL-003406. Language necessary for the formation of a collective bargaining agreement includes a ratification section, the CBA term, a recognition clause, and definitions. Additionally, a grievance procedure may be included in a collective bargaining agreement.<sup>2</sup> Pursuant to IC 20-29-6-2, the following cannot be in a CBA: impermissible subjects of bargaining (as set forth in IC 20-29-6-4.5(a)), provisions that conflict with any right or benefit established by federal or state law, provisions that conflict with school employee rights in IC 20-29-4-1 and IC 20-29-4-2, provisions that conflict with school employer rights set forth in IC 20-29-4-3, restructuring options, and a school's ability to work with educational entities regarding postsecondary or dual credits. IEERB encourages the parties to carefully review any tentative agreements in their entirety prior to ratification and submission to ensure compliance. IEERB is not able to provide

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<sup>2</sup> A school employer and an exclusive representative are prohibited from mutually agreeing to binding arbitration concerning teacher dismissals. *See* IC 20-28-7.5-7.

legal advice on CBA content or compliance.<sup>3</sup> For more information on particular provisions that the IEERB Board has evaluated, see IEERB's website. For legal advice, contact your local counsel.

Once the parties have reduced their agreements to writing, the CBA must be ratified by the governing body of the school employer and the exclusive representative. **Once it is ratified, a CBA must be uploaded to Gateway at <https://gateway.ifionline.org> and posted online by the school employer.**<sup>4</sup> The exclusive representative may email the ratified CBA to IEERB at [ratifiedcontract@ieerb.in.gov](mailto:ratifiedcontract@ieerb.in.gov). The CBAs posted online must be identical to the one sent to IEERB, and must include all side agreements or MOUs regarding subjects of bargaining. IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA to IEERB. IEERB may return CBAs if they are not signed, lack a valid term, or are incomplete (e.g., attachments or agreements referred to in the CBA are not actually attached).

See IC 20-29-6, 560 IAC 2-4, and IEERB precedent (to the extent it is still good law) for more information.

## II. Bargaining Status Form

IEERB annually collects bargaining information from all parties who collectively bargain under the teacher collective bargaining law. The Bargaining Status Form is in two sections: Pre-Impasse and At-Impasse. IEERB uses the Gateway portal to collect and manage the Pre-Impasse Section. Both the school employer and exclusive representative will be given a username and password to complete this Section. Information submitted on the Pre-Impasse Section, or the failure of a party to submit it, may be used in IEERB's determination of impasse.

When parties are at impasse, IEERB will email the second section of the Bargaining Status Form, At-Impasse, to both parties. Both parties must return this Section to [Impasse@ieerb.IN.gov](mailto:Impasse@ieerb.IN.gov). If a party would like to argue at fact-finding that the school employer's revenue available for bargaining from the school funding formula<sup>5</sup> will be different than the Indiana Department of Education's ("DOE") Certification for general fund

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<sup>3</sup> The State Board of Accounts reviews CBAs for compliance during their biannual audits. Check with State Board of Accounts for any current guidance they may have on CBAs. **Note: SBOA's guidance is not binding on IEERB, and may not reflect IEERB's views.**

<sup>4</sup> See 560 IAC 2-5-1 (parties must submit ratified contracts to IEERB); IC 20-29-6-19 (providing that not later than 14 business days after the parties have reached an agreement under this chapter, the school employer shall post the contract upon which the parties have agreed on the school employer's Internet web site).

<sup>5</sup> According to DOE's certification, this is the same as state tuition support.

revenue pursuant to Indiana Code section 20-29-6-12.5(b) ("DOE Certification"), the party must list that amount on the At-Impasse Section. Failure of a party to list its estimated school funding formula revenue operates as a waiver to use a different number for the financial implication factor during fact-finding. *See Jay Sch. Corp.*, F-13-01-3945 at 10-12 (IEERB Bd. 2013), *on appeal*, Cause No. 49D02-1402-PL-003406.

### III. Whether Parties Must Bargain

Generally, parties must bargain if part or all of their CBA is expired or will expire prior to the next bargaining season. In certain cases, IEERB may contact the parties to request information as to why parties are not bargaining. Parties may agree not to reopen a mandatory reopener. To avoid declaration of impasse, the parties will need to submit a **joint, written, and ratified statement** that the parties have agreed not to reopen the CBA.

Parties with a calendar-year CBA shall bargain a successor CBA in the year in which the CBA expires. Parties with calendar-year contracts may continue the terms of their current CBA until the end of the fiscal year in which the CBA expires if they send a **joint, written, and ratified statement** to IEERB indicating such. Parties with CBAs that would not allow them to bargain a successor CBA pursuant to the new timelines should contact IEERB. In general, unless the CBA so provides, bargaining a successor CBA will not affect the terms of the current CBA, which will continue until its expiration.

### IV. Compensation Models<sup>6</sup>

IC 20-28-9-1.5 provides that salary increases or increments must be based upon a combination of the following factors:

1. Education and experience. Specifically, a combination of
  - a. the attainment of either: additional content area degrees beyond the requirements for employment; or additional content area degrees and credit hours beyond the requirements for employment, if required under an agreement bargained under IC 20-29; and
  - b. the number of years of a teacher's experiencetaken together may account for not more than 33% of the calculation used to determine a teacher's increase or increment.

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<sup>6</sup> IC 20-28-9-1.5 provides several grandfather clauses. Specifically, the new compensation model requirements should not be construed to require or allow a school employer to decrease the salary of any teacher below the salary the teacher was earning on or before July 1, 2012, if that decrease would be solely to conform to the new salary scale. Moreover, compensation attributable to additional degrees or graduate credits earned before the effective date of the local salary schedule created under IC 20-28-9 shall continue. Compensation attributable to additional degrees for which a teacher has started course work before July 1, 2011, and completed course work before September 2, 2014, also shall continue.

2. Evaluation. Specifically, the results of an evaluation conducted under IC 20-28-11.5.
3. Leadership. Specifically, the assignment of instructional leadership roles, including the responsibility of conducting evaluations under IC 20-28-11.5.
4. Student needs. Specifically, the academic needs of students.

Compensation models do not need to be in a chart format like the traditional salary schedule. *See Carmel Clay Schs.*, F-12-01-3060 at 4 (IEERB Bd. 2013), *on appeal*, Cause No. 49D05-1312-PL-045234; *Jay Sch. Corp.*, F-13-01-3945 at 14-18 (IEERB Bd. 2013), *on appeal*, Cause No. 49D02-1402-PL-003406. A teacher rated ineffective or improvement necessary under IC 20-28-11.5 may not receive any raise or increment for the following year if the teacher's employment contract is continued. The amount that would otherwise have been allocated for the salary increase of the teachers rated ineffective or improvement necessary shall be allocated for compensation of all teachers rated effective and highly effective based on the factors listed above. CBAs also should indicate how new teachers will be compensated.

Each school corporation shall submit its compensation model to DOE, who will publish the models on its website. DOE shall report any noncompliance to the Indiana State Board of Education, who shall take appropriate action to ensure compliance.<sup>7</sup>

Additionally, although IEERB does not provide legal advice or endorsements of compensation models, compensation models are available for review through Gateway at [https://gateway.ifionline.org/report\\_builder](https://gateway.ifionline.org/report_builder) or IEERB Search at: <https://ieerbsearch.ieerb.in.gov/login.aspx>. **Please note that IEERB's posting signifies neither the CBA's compliance with applicable laws and rules, nor IEERB's endorsement of the CBA.** IEERB strongly recommends that compensation models are carefully reviewed to ensure they are compliant, complete, and understandable prior to ratification and submission. For more information, see IC 20-28-9-1.5.

## V. Exchanging Collective Bargaining Information

A free flow of information is essential to a good bargaining relationship. *Lebanon Community Schs.*, U-10-13-0665, 2012 WL 3549830, at \*3 (IEERB HE Order, Mar. 27, 2012). IEERB encourages parties to voluntarily and readily exchange bargaining information. Parties have a duty to timely provide "information about mandatory subjects of bargaining for purposes of making future bargaining proposals, current bargaining proposals, or for contract administration." *Id.* This duty is separate from schools' disclosure duties

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<sup>7</sup> DOE has developed an Indiana Model Salary Schedule. Please check with the DOE for any current guidelines or salary models. **Note: DOE's guidance is not binding on IEERB, and may not reflect IEERB's views.**

pursuant to the Access to Public Records Act. *Id.*<sup>8</sup> See IEERB precedent for more information on disclosure requirements.

## VI. Expiration of Collective Bargaining Agreements

Collective bargaining agreements may not extend past the end of a state budget biennium (June 30 of odd-numbered years). Upon the expiration of the current contract that is in effect, the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed, unless continuation would put the school employer in a position of deficit financing.<sup>9</sup> For more information, see IC 20-29-6-4.7 and IC 20-29-6-16.

## VII. Best Practices

Being prepared and actively engaging in collective bargaining will help all the parties resolve matters more quickly and efficiently. Here are some tips to help you prepare:

- Review the law, rules, and guidance provided by IEERB and your attorney.
- Exchange collective bargaining information.
- Start informally bargaining early, and determine what, if any, issues may be quickly resolved.
- Prepare a history of general fund revenue and expenditures.
- For each issue, determine the overall cost compared to available funds.
- For each issue, determine the source of the funding, and whether it will be available if the parties go to fact-finding.
- For each contested issue, be sure you can articulate the reason for your position and counter any reasons against it that may be offered by the other side.
- Be open to creative solutions that address the interests of both parties.
- Begin researching comparable information.<sup>10</sup> Comparable information for public employees may be found on Gateway at <https://gateway.ifonline.org>.

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<sup>8</sup> APRA, IC 5-14-3 et seq., allows all persons, including associations, access to public records from a public agency. The Public Access Counselor provides advice and assistance concerning Indiana's public access laws to members of the public and government officials and their employees. For more information on APRA, including requirements, exclusions, timelines, etc., go to [www.in.gov/pac](http://www.in.gov/pac).

<sup>9</sup> The section also provides that if an agreement has not been reached on the items to be bargained collectively by November 1, as provided in IC 6-1.1-17-5, the parties shall continue the terms of the current contract that is in effect, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this period, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

<sup>10</sup> One of the factors in fact-finding involves comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns



## **Discussion**

Discussion is the performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to discuss, provide meaningful input, or exchange points of view, with respect to the following subjects: curriculum development and revision; textbook selection; teaching methods; hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees; student discipline; expulsion or supervision of students; pupil/teacher ratio; class size or budget appropriations; safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law; and hours. The obligation to discuss does not require either party to enter into a contract, agree to a proposal, or make a concession related to the mandatory subjects of discussion.

Discussion is an important and mandatory part of labor relations. Best practices include taking discussion seriously; preparing reasons for proposals; setting an agenda; actively listening; and being open to alternate suggestions.

See IC 20-29-2-7, IC 20-29-6-6, IC 20-29-6-7, IC 20-29-6-8, and IEERB precedent (to the extent it is good law) for more information.

## **Miscellaneous Topics**

### **I. Committee Appointments**

Pursuant to IC 20-29-5-7, the percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school or district wide committee may not exceed the percentage of teachers who are members of the exclusive representative. Committees under this section may not address subjects of bargaining. This section does not apply to the bargaining team for the exclusive representative.

### **II. Collective Bargaining/Discussion Meetings**

Pursuant to IC 5-14-1.5-6.5, whenever a governing body, or any person authorized to act for a governing body, meets with an employee organization, or any person authorized to act for an employee organization, for the purpose of collective bargaining or discussion, any party may inform the public of the status of collective bargaining or discussion as it progresses by release of factual information and expression of opinion based upon factual information. *See, e.g., Carmel Clay Schs., U-12-04-3060, at 4 (IEERB Bd. 2013).*

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doing comparable work, giving consideration to factors peculiar to the school employer. See the Fact-Finding section below for more details.

### III. Miscellaneous Issues

The obligation to bargain collectively or discuss a matter does not prevent a school employee from petitioning the school employer, governing body, or superintendent for a redress of the employee's grievances, either individually or through the exclusive representative; or the school employer or superintendent from conferring with a citizen, taxpayer, student, school employee, or other person considering the operation of the schools and the school corporation. Nothing shall prevent a superintendent or the superintendent's designee from making recommendations to the school employer. See IC 20-29-6-9, 10 for more information.

By September 15 of each school year, the local president or other officer or designee of the exclusive representative shall certify by affidavit to the school employer the number of teachers in each school and in the entire school corporation who are members of the exclusive representative. See IC 20-29-5-7(e) for more information.

## Impasse

### I. Declaration of Impasse

IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining for all or part of a contract and have not submitted a ratified CBA to IEERB. Parties must inform IEERB of their bargaining status through Bargaining Status Form: Pre-Impasse Section. Any updates should be sent to [impasse@ieerb.in.gov](mailto:impasse@ieerb.in.gov).

IEERB will send a Declaration of Impasse to the contacts listed on the parties' Pre-Impasse Section. Once impasse is declared, it will continue unless and until IEERB receives either a ratified CBA or a fact-finder's report.

Upon receipt of the Declaration of Impasse, each party is required to complete the second section of the Bargaining Status Form, entitled At Impasse. Both parties must return this Section to [impasse@ieerb.in.gov](mailto:impasse@ieerb.in.gov). This Section will provide IEERB with the name, position, address, e-mail address, and phone number of its chief spokesperson, and of the individual to whom billing invoices should be submitted. Moreover, as noted above, if your party would like to argue at fact-finding that the school employer's revenue available for bargaining from the school funding formula will be different than the DOE Certification, you MUST list that amount on the At-Impasse Section. Failure of a party to list its estimated school funding formula revenue operates as a waiver to use a different number for the financial implication factor during fact-finding.

Each party is required to immediately submit a change in contact information occurring during impasse. Unless otherwise indicated in these rules, all correspondence for impasse procedures shall be via e-mail. Parties or the IEERB may, in addition to e-mail,

correspond via mail, facsimile, or hand delivery. Receipt of an e-mail will be presumed upon dispatch.

See 560 IAC 2-4 for more information.

## II. Suspension of Impasse Procedures

Impasse procedures (including declaration of impasse, mediation, and fact-finding) shall be suspended where an unfair practice complaint is filed and:

- (1) the complaint requests a stay of impasse procedures; and
- (2) the complaint alleges that:
  - a. the school employer violated IC 20-29-7-1(a)(1) by interfering with, restraining, or coercing school employees in the exercise of the rights guaranteed in IC 20-29-4; or
  - b. the school employer violated IC 20-29-7-1(a)(5) by refusing to bargain collectively with an exclusive representative as required by IC 20-29; or
  - c. the school employee organization or the organization's agents violated IC 20-29-7-2(1)(A) by interfering with, restraining, or coercing school employees in the exercise of the rights guaranteed in IC 20-29; or
  - d. the school employee organization or the organization's agents violated IC 20-29-7-2(3) by refusing to bargain collectively with a school employer if the school employee organization is the exclusive representative; and
- (3) the complaint alleges that a stay is required because the case implicates impasse procedures.

The stay will continue until a determination of the unfair practice complaint is made. The complaint shall be given priority over other unfair practice complaints. The Board or its agent may proceed with the impasse procedures where:

- (1) the complaining party in the unfair practice complaint does not request a stay; or
- (2) the complaining party in the unfair practice complaint later requests that impasse procedures proceed; or
- (3) the Board or its agent determines that a stay is inappropriate given the nature of the allegations.

*See Carmel Clay Schs., U-12-04-3060, at 4 (IEERB Bd. 2013).*

## III. End of Impasse

Impasse will end with either a fact-finder's report or the submission to IEERB of a ratified CBA. If the parties settle prior to the initiation of fact-finding, IEERB will issue an End of Impasse Notice.

## **Mediation**

Once impasse is declared, IEERB will appoint a mediator within 15 days. Mediation is mandatory, and the cost is split by the parties. It will consist of 1-3 sessions and last up to 30 days. During mediation, the mediator will attempt to help the parties reach a settlement, but cannot force a settlement. If for any reason either party does not feel that mediation will be successful, please let the mediator know immediately so the mediator can decide how to proceed.

### **I. Mediators**

The Chairperson appoints impasse mediators from its staff or ad hoc panel. Persons serving as mediators shall:

- have no interest in the outcome of the proceeding;
- be impartial;
- have knowledge of rules and regulations relating to collective bargaining and impasse;
- be qualified as determined by the Chairperson consistent with applicable laws and rules; and
- not be an employee of, or related to, either party or attorneys involved in the proceeding.

At no cost to the parties, IEERB provides training to its mediators on the laws and rules of teacher collective bargaining. IEERB strives to appoint quality mediators who will best facilitate settlement and uses several factors in making appointments, including but not limited to, mutual party requests, appointee background, nature of dispute, and appointee availability. The Chairperson may appoint co-mediators or team mediators. Parties may jointly request a mediator if they wish. A list of approved ad hoc panelists can be found on IEERB's website at <http://www.in.gov/ieerb/2390.htm>. Such a request will be taken into consideration by IEERB, but may not be granted.

As part of the mediator appointment, IEERB will:

- inform the parties of the mediator rate and billing/collection procedure;
- advise the parties that the mediator does not represent either or both of the parties;
- define and describe the process of mediation to the parties;
- disclose the nature and extent of any relationships the Board is aware of that the mediator has with the parties and any personal, financial, or other interest that may result in bias or a conflict of interest;
- advise the parties to consider independent legal advice;
- advise the parties that mediation must result in either a settled and ratified collective bargaining agreement or the exchange of LBOs;
- advise the parties that neither a mediator nor a mediator's work product is subject to process; and
- set the latest date mediation will end ("End Date").

Information disclosed by a party to a mediator in the performance of mediation functions shall not be disclosed by the mediator voluntarily or by compulsion outside of the mediation process. All files, records, reports, documents, or other papers prepared by a mediator, aside from a final report pursuant to IC 5-14-1.5-6.5, shall be confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by the mediator, on behalf of any party to any cause pending in any type of proceeding.

A mediator, co-mediator, or team mediator appointed by the Board has immunity in the same manner and to the same extent as a judge having jurisdiction in Indiana.

## II. Mediation Process

The mediator shall inform the parties of:

- the nature and extent of any relationships the mediator has with the parties;
- any personal, financial, or other interest that may result in bias or a conflict of interest; and
- the date, time, and location of the mediation session(s) reasonably in advance of the session.

The person listed by the parties as the chief negotiator will be the main point of contact by the mediator, unless a party notifies the mediator of a change.

Mediation begins on the date of the mediator appointment and will last until the earlier of:

- the End Date;
- the date set by the mediator after at least one mediation session;
- the date mutually agreed upon by the parties after at least one mediation session; or
- submission to IEERB of a ratified collective bargaining agreement.

If mediation does not result in a ratified collective bargaining agreement, the mediator shall set a date – which can be no later than the End Date – for the parties to exchange LBOs.

Receiving information from the parties outside of a session, particularly prior to the first session, will help the mediator devise a mediation strategy based on the particular case, and will likely lead to a quicker (and cheaper) resolution. Therefore, the following are recommendations regarding exchange of information. A party may engage in a private and confidential discussion with the mediator about the bargaining impasse via telephone outside of a mediation session. During this discussion, the party may inform the mediator of:

- the legal and factual contentions of the party;
- the party's settlement posture;
- the negotiations to date;
- the parties' collective bargaining history; or
- other relevant information the party believes will help settlement.

Additionally, or alternatively, a party may submit to the mediator a confidential statement of the bargaining impasse, not to exceed five pages, during the mediation time period. The statement may include the information listed above. A confidential statement may be supplemented by exhibits or evidence that must be made available to the opposing party or representative at the time the mediation statement is sent to the mediator. A confidential statement is privileged and confidential unless the submitting party submits a written statement to the mediator providing otherwise.

Mediation will consist of 1-3 sessions. When possible, the school employer shall host the mediation sessions. The mediation session will last until either the mediator deems it improper, unproductive, or unconscionable to continue, or by mutual agreement of the parties. At least one individual with authority to enter into a tentative agreement from each party must be present at all times during a mediation session unless excused by the mediator. Mediations shall be private unless the mediator and both parties agree otherwise.

During the mediation time period, the mediator shall inform IEERB staff immediately if: mediation will end earlier than the End Date; the parties have reached a tentative agreement; or LBOs will be exchanged. The mediator also will report the number of hours worked and expenses incurred during mediation. The current hourly rate for mediators is \$800/7.5. **IEERB will pay the mediator, and then send the parties an invoice reflecting the shared cost. This invoice will be due 30 days from receipt.** For more information on the collection process, please contact IEERB's conciliation director.

See IC 20-29-6-13 and 560 IAC 2-4 for more information.

### III. Best Practices for Impasse Mediation

Successful mediation often will require time and effort by the parties and the mediator. This time and effort can pay off in a big way – if you settle and ratify a CBA, not only are you done with impasse, but you will not have to participate in fact-finding (and may not have to draft an LBO, depending on when settlement occurs), which may involve significant time and money. Below is some additional information on what to expect from mediation to help you prepare.

After receiving a Declaration of Impasse from IEERB, you will receive a Mediator Appointment, which will name the appointed mediator and provide information on the process.

Within the mediation period (up to 30 days), the parties must attend at least one mediation session,<sup>11</sup> and may attend up to three. If the parties settle, the CBA must be ratified within the mediation period. Therefore, **parties in mediation should plan for possible ratification within the mediation timelines.** IEERB will issue an End of Impasse notice when it receives a ratified CBA. If the parties do not settle and ratify a CBA, they will have to exchange LBOs by the date given by the mediator within the mediation period. As such, **parties beginning mediation should familiarize themselves with the LBO requirements and begin preparing their LBOs**, if they haven't already. See Last, Best Offers section, below.

In addition to receiving information as indicated above, the mediator also may proffer information on his or her general style of mediation. For example, many mediators will start with a joint session where the parties present an opening statement and then split the parties into separate rooms for the remainder of the session. Other mediators will have no joint sessions; others will not separate the parties. Moreover, the mediations may differ from session to session. If not provided, the parties may ask the mediator what the parties can expect from the first mediation session, including whether they will be asked to provide opening statements. Opening statements generally consist of concise statements regarding a party's positions on disputed issues.

Regardless of the format of mediation, the parties should be prepared to explain to the mediator and the other party their positions on the disputed issues and the support for that position. To do that, the parties will have to know and understand the basics of the law and procedures, the cost and source of funding for their proposals, and the reason their position should be adopted (a good place to start are with the factors a fact-finder takes into consideration in making a determination).<sup>12</sup> Also, knowing – and being able to articulate – why your position is important to you may help the mediator devise creative solutions that address the interests of both parties.<sup>13</sup>

Parties may need to request information from the other side in order to be prepared for mediation. Such information should be requested as far in advance as possible to give the other party time to respond. For more information, see the section entitled Collecting Information for Bargaining, above.

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<sup>11</sup> Parties must attend at least one mediation session prior to exchanging LBOs. Parties do not have to attend a mediation session if they settle, ratify, and submit to IEERB a CBA prior to the first mediation session.

<sup>12</sup> The factors a fact-finder uses in fact-finding include: the financial impact on the school employer and whether any settlement will cause the school employer to engage in deficit financing; the public interest; past memoranda of agreements and contracts between the parties; and comparisons of wages and hours of the employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school employer.

<sup>13</sup> Remember that CBAs must still be compliant with other laws, such as federal and state wage payment and collection laws.

Varying interests may not only be represented on opposite sides of the table, but also on the same side of the table. The mediator is there to mediate between the parties, not within the parties. As such, meeting with the team who will attend mediation for your party prior to mediation to sort through and decide on issues will help to show a unified front and ultimately may facilitate settlement.

The takeaway: preparing for mediation and taking it seriously will help all the parties resolve matters more quickly and efficiently. Here are some tips to help you prepare:

- Review the law, rules, and guidance provided by IEERB and your attorney.
- Exchange collective bargaining information.
- Be as flexible as possible with scheduling.
- Be prepared to provide the mediator with requested information to help the mediator understand the nature of impasse prior to the start of mediation.
- Be prepared to stay at mediation for as long as it takes to settle, or for the session to become unproductive.
- Key bargaining team members should attend mediation sessions.
- Determine which issues are contested.
- For each contested issue, determine the overall cost compared to available funds.
- For each contested issue, determine the source of the funding, and whether it will be available if the parties go to fact-finding.
- For each contested issue, be sure you can articulate the reason for your position and counter any reasons against it that may be offered by the other side.
- Be open to creative solutions that address the interests of both parties.

### **Last, Best Offers**

An LBO is comprised of the contract terms a party would like to have as the parties' CBA, as well as supporting documents and information. If parties at impasse do not settle during mediation, they must exchange LBOs and send a copy to IEERB. During the fact-finding process, the fact-finder will choose one party's LBO as the parties' CBA.

#### **I. Requirements**

**An LBO shall be presented to the opposing party at the end of mediation if the parties have not settled and ratified a CBA. The LBO also must be submitted to IEERB via email at [impasse@ieerb.in.gov](mailto:impasse@ieerb.in.gov) within two days after mediation has ended.<sup>14</sup> The**

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<sup>14</sup> The LBO submitted to IEERB must be identical to the LBO presented to the opposing party at the end of mediation. If the large size of any supporting documentation precludes electronic delivery,



LBO shall be submitted in the format required by IEERB and include all information and documents required by IEERB.<sup>15</sup> Prior to October 1st of each year, IEERB will post on its website the required format, information, and documents for an LBO for that year's bargaining season. This information also will be sent to the parties with the Declaration of Impasse. Check IEERB's website for the latest LBO Requirements.

## II. Certifications

Before August 1 of the first year of the state budget biennium, the DOE shall provide the parties with an estimate of the general fund revenue available for bargaining in the school corporation from the school funding formula. Within 30 days after the date of the fall count of ADM of the school year in the first year of the state budget biennium, the DOE shall provide the parties with its DOE Certification, which will entail a certification of estimated general fund revenue available for bargaining from the school funding formula. A school employer that has passed a general fund operating referendum under IC 20-46-1 must have that amount certified by the department of local government finance ("DLGF Certification") before the commencement of bargaining. For more information, see IC 20-29-6-12.5 or contact DOE or DLGF.

## III. Deficit Financing

Deficit financing is defined as actual expenditures exceeding the employer's current year actual general fund revenue for a budget year. It is unlawful for a school employer to enter into a CBA that would place it in deficit financing. A CBA that provides for deficit financing is void to that extent, as is an individual teacher's contract executed under the CBA.

At fact-finding, the parties must show how the school employer can afford their proposals. *Jay Sch. Corp.*, F-13-01-3945, at 5 (IEERB Bd. 2013), *on appeal*, Cause No. 49D02-1402-PL-003406. In determining deficit financing, the fact-finder and the Board will compare the cost of the proposal and non-bargaining unit member costs from the general fund with general fund revenue. *Nettle Creek Sch. Corp.*, F-11-02-8305, at 14 (IEERB Bd. 2012), *on appeal*, Cause No. 49A02-1402-PL-78; *Carmel Clay Schs.*, F-12-01-3060, at 2 (IEERB Bd. 2013), *on appeal*, Cause No. 49D05-1312-PL-045234. Specifically,

**DOE Certification + DLGF Certification + General Fund Miscellaneous Revenue  
– General fund non-bargaining unit member costs (e.g., costs of non-  
bargaining unit members, utilities)  
= money available to fund an LBO.**

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the supporting documentation may be submitted to IEERB in hard copy or an electronic format within 24 hours of the submission of the LBO.

<sup>15</sup> In addition to other requirements set forth by IEERB, each party's LBO shall contain a signed verification stating that all information is correct and that the LBO does not place the employer in a position of deficit financing.

Such determinations will be made on the **state fiscal year, from July 1 – June 30**. *Carmel Clay Schs.*, F-12-01-3060, at 2 (IEERB Bd. 2013), *on appeal*, Cause No. 49D05-1312-PL-045234.

See IC 20-29-2-6; IC 20-29-6-3; and IEERB cases cited above.

#### IV. IEERB Staff Review

IEERB staff will review submitted LBOs to ensure that the LBOs are in the required format and contain the required information and documents. Such review will be made by IEERB staff, and firewalled from all Board members. If a party has substantially, but not fully, complied with the LBO requirements, IEERB staff will notify the submitting party, who will have twenty-four hours to provide the requested format, information, or documents. Parties determined by IEERB staff to be substantially non-compliant may make an offer of proof within the timeframe provided by IEERB. IEERB's review will contain only an initial assessment. The fact-finder will determine what actions, if any, are appropriate. Failure to substantially comply with the requirements of an LBO, or to submit an LBO as requested by IEERB, could result in rejection of the submitted LBO and acceptance of the opposing party's LBO. Fact-finder determinations on LBOs may be appealed to the Board through the normal appeal process explained below.

See 560 IAC 2-4-3.1; *Carmel Clay Schs.*, F-13-04-3060, at 3-4 (HE Order 2013), *aff'd in relevant part by Carmel Clay Schs.*, F-13-04-3060 (IEERB Bd. 2013).

#### V. Career Centers, Special Education Cooperatives, and Other Special Cases

A school employer, or an exclusive representative who bargains with a school employer, that does not receive a DOE Certification pursuant to Indiana Code Section 20-29-6-12.5, or for whom the LBO Requirements may need to be modified, may request a conference with IEERB staff in writing at any time from the start of formal bargaining until two weeks after a mediator appointment. After receiving a request, IEERB staff shall hold a conference with the parties to determine the funding mechanisms particular to the school employer. Within one week of the conference (or the issuance of the year's LBO requirements, whichever is later), IEERB staff shall issue a non-binding advisory opinion on the revenue available to the parties for use in their LBO and any modified LBO Requirements.

#### VI. Joint LBOs

IEERB rule 560 IAC 2-4-4(b) provides that parties who settle during fact-finding must submit identical LBOs to the fact-finder. Joint LBOs may be filed at any time during fact-finding, but should be filed as soon as practicable, and as much notice as possible should be given to the fact-finder. Joint LBOs must include the proposed collective bargaining agreement and deficit financing verifications. The fact-finder may require the parties to submit any other information the fact-finder deems necessary to rule on the joint LBO. See *Flat Rock Hawcreek*, F-13-02-0370 (HE Order 2013).

## VII. Best Practices

Completing an LBO requires the submission of financial information and documents. IEERB recommends that parties have this information prior to the start of mediation. Regardless, parties without these documents should ensure that these documents are requested with enough time for the other party to produce them, in addition to the time it will take the requesting party to analyze and explain them in the LBO. Parties also may want to request information beyond what is required for the LBO in order to sufficiently explain their LBO. For more information, see the Collecting Information for Bargaining section above.

Although it is necessary to have financial information and documents, a good LBO will go further and explain the proposed CBA terms in relation to the financial documents and information. This will likely take time and preparation. As such, IEERB recommends that parties not wait until the last minute to start preparing their LBO. Moreover, such preparation may be helpful in negotiations, including at mediation.

Once you have exchanged LBOs, IEERB recommends reading and analyzing the other party's LBO not only to prepare for fact-finding (explained in more detail below), but also to determine whether settlement is possible. Parties may settle and ratify a CBA prior to the appointment of a fact-finder. Parties that do so will be issued an End of Impasse notice.

See IC 20-29-6-15.1; IC 20-29-8-7; and 560 IAC 2-4-3.1 for more information.

### **Fact-Finding**

If mediation is unsuccessful, IEERB will appoint a fact-finder within 15 days from the end of mediation, and fact-finding will commence. The purpose of fact-finding is to provide a final solution on collective bargaining whenever the parties are unable by themselves, or through a mediator, to timely settle a CBA. The fact-finder will conduct an investigation, which may include a public hearing, into the parties' LBOs. The fact-finder must select one party's LBO as the binding contract terms. The parties shall split the cost. Fact-finding may not last longer than 15 days from the date of the fact-finder appointment. As such, it is important that the parties work with the fact-finder and make their schedules available for a hearing. **The fact-finder may unilaterally set the hearing time and date.**

#### I. Fact-Finder

The fact-finder may be aided in the fact-finding process by a financial consultant appointed by IEERB. This consultant will have a background in finance, and aid the fact-finder in the financial aspects of the parties' LBOs. The financial consultant will contact the parties through the fact-finder and will not make a determination on the LBOs.

The Chairperson appoints fact-finders and financial consultants from its staff or ad hoc panel. Persons serving as fact-finders and financial consultants shall:

- have no interest in the outcome of the proceeding;
- be impartial;
- have knowledge of rules and regulations relating to collective bargaining and impasse;
- be qualified as determined by the Chairperson consistent with all applicable laws and rules; and
- not be an employee of, or related to, either party or attorneys involved in the proceeding.

At no cost to the parties, IEERB trains fact-finders and financial consultants on the laws and rules of teacher collective bargaining. IEERB attempts to find a good fit between the parties and the fact-finder and financial consultant based on several factors including, but not limited to, mutual party requests, appointee background, nature of dispute, and appointee availability. A list of approved ad hoc panelists can be found on IEERB's website at <http://www.in.gov/ieerb/2390.htm>. Mutual requests will be taken into consideration by IEERB, but may not be granted.

## II. Hearing

During the public hearing, each party shall present fully its LBO, including the fiscal rationale for the offer. The school employer is responsible for providing a room for the fact-finding hearing and equipment and necessary materials for recording of the proceedings. Additionally, IEERB will provide, at its expense, either recording equipment or a court reporter. Three copies of all written materials presented during the hearing (e.g., Powerpoint presentations) should be given to the fact-finder at the start of the hearing.

**Order of Presentations.** Unless otherwise determined by the fact-finder (pursuant to a party's motion, the parties' agreed motion, or at the fact-finder's initiation), the school employer, as the keeper of the school's records, will present first.

**Content of Presentations.** Each party has a maximum of two hours to make its case in the fact-finding hearing. Unless the parties and the fact-finder agree to a different procedure – which must be consistent with all applicable law and rules – the parties shall make their case in two alternating parts: why their LBO should be chosen, followed by why the opposing party's LBO should not be chosen.<sup>16</sup>

After the initial presentations, the parties shall take part in the rebuttal. The parties have one hour each for rebuttals. The fact-finder may extend the parties' time equally if

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<sup>16</sup> Parties are not prohibited from discussing both LBOs in either opening presentation, but the thrust of the presentations should be as provided above.

necessary for the fact-finder's determination. Unless the parties and the fact-finder agree to a different procedure – which must be consistent with all applicable laws and rules – the party who presented first shall make the first rebuttal. The parties shall alternate rebuttals, with the party who presented second closing rebuttals. During rebuttals, the parties may introduce new facts and respond to arguments made by the opposing party. New arguments, however, shall not be allowed. A fact-finder should either disregard new arguments or allow the opposing party extra time to respond. A fact-finder may, but is not required to, provide additional time for closing arguments. If closing arguments are made, the party who presented second should present last.

Sample Hearing:

- **Opening of Hearing** by Fact-Finder
  - Introductions
  - Ground rules and expectations
  - Hearing agenda
  - Swearing in of all fact givers
  - Conclusion
- **Initial Presentations** (each side gets two hours total unless extended by fact-finder)
  - School employer presents on why its LBO should be chosen – 1 hour
  - Exclusive representative presents on why its LBO should be chosen – 1 hour
  - School employer presents on why the exclusive representative's LBO should not be chosen – 45 minutes
  - Exclusive representative presents on why the school employer's LBO should not be chosen – 45 minutes
- **Break**
- **Rebuttals** (each side gets one hour total unless extended by fact-finder)
  - School employer responds to exclusive representative's arguments – 30 minutes
  - Exclusive representative responds to school employer's arguments – 30 minutes
  - School employer responds to exclusive representative's rebuttal – 15 minutes
  - Exclusive representative responds to school employer's rebuttal – 15 minutes
- **Close of Hearing** by Fact-Finder

Parties must designate at least one person who can provide facts and answer factual questions by the fact-finder. All such persons must be sworn in (by oath or affirmation), which may take place at the beginning of the hearing, or at any other time during the hearing prior to the presentation of facts. Representatives do not need to be sworn in unless presenting facts not otherwise in the record.

Cross-examination is not allowed. The fact-finder or financial consultant, but not a party, may ask a party questions before, during, or after, a party's presentation or rebuttal.

Fact-finding hearings are open to the public. However, no public testimony or comments will be allowed at the hearing, or at any phase of the fact-finding process.

Fact-finding hearings are not subject to the Indiana Administrative Orders and Procedures Act or the Indiana Rules of Evidence. However, parties should provide foundation for all evidence, as well as information indicating authenticity. Parties may make objections that will be ruled upon by the fact-finder.

### III. Fact-Finder's Order

The fact-finder must select one party's LBO as the binding contract terms. The fact-finder's order:

- may be restricted to those issues the fact-finder deems significant;
- is restricted to only those items permitted to be bargained and included in the collective bargaining agreement;
- must not put the employer in a position of deficit financing; and
- may not impose terms beyond those proposed by the parties in their LBOs.

The fact-finder may use evidence from the parties, the Board, the Board's staff, or any other state agency. The fact-finder shall consider the following factors:

- the public interest;
- the financial impact on the school employer and whether any settlement will cause the school employer to engage in deficit financing;
- past memoranda of agreements and contracts between the parties; and
- comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school employer.

The fact-finder and financial consultant will submit their hours worked and expenses incurred during fact-finding. The current hourly rate is \$1,200/7.5 for fact-finders and \$500/7.5 for financial consultants. **IEERB will pay the bill, and then submit an invoice to the parties reflecting the split cost. The invoice will be due 30 days after receipt.** For more information on the collection process, please contact IEERB's conciliation director.

### IV. Appeal Process

To obtain Board review of a fact-finding report, a request must be made by the school employer or the exclusive representative within 30 days after receipt of the report.

The request must be in writing and state the specific nature of each objection to the report.<sup>17</sup>

Any party in opposition to the appeal may file an answering brief within 15 days of the filing of the written appeal with IEERB. No additional briefs may be filed unless requested by the Board.

The Board will decide the matter upon the record, with or without oral argument. The Board also will determine whether to use a financial consultant. The Board will give notice to the parties of the financial consultant if possible. At the Board meeting, the financial consultant may be asked questions or to engage in discussion on the case. The parties shall be given an opportunity to challenge or rebut any statements made by the financial consultant. The Chairperson shall determine the amount of time given to the parties to respond.

The appealing party must bear the cost for preparation of a hearing transcript.

Parties may appeal the Board's final order to a court of competent jurisdiction within the applicable statute of limitations.

See IC 20-29-6; IC 20-29-8; and 560 IAC 2-4 for more information.

## V. Best Practices

Fact-finding can be a time-consuming – and costly – process. The good news is that your LBO, which had to be exchanged prior to the start of fact-finding, is the basis of the fact-finding process. As such, assuming that you crafted a complete LBO that is easily understood by third parties, most of the legwork will have been done by the time fact-finding has started.

As the LBO will already be prepared, perhaps the biggest preparation during fact-finding will be the presentation at the hearing. Not only is this a chance to explain your case more thoroughly to the fact-finder, but it may be the first chance you have to rebut the other party's LBO. As such, in the presentation, you will want to focus on the reasons your LBO should be accepted, as well as explaining why the other party's LBO should not be accepted. This argument should be based on the statutory factors a fact-finder must consider, and be supported by evidence to the extent possible.

The takeaway: preparing for fact-finding will help your case and reduce costs. Here are some tips to help you prepare:

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<sup>17</sup> The notice of appeal can be oral or in writing but must state the nature of the objection to the report. If the request is oral, a written confirmation of the request must be received by the Board within two days.

- Review the law, rules, and guidance provided by IEERB and your attorney.
- Read carefully and analyze the other party's LBO.
- Determine if there is a chance for settlement after reviewing the LBOs.
- Determine which issues are contested after reviewing each LBO.
- For each contested issue, determine the overall cost compared to the available revenue.
- For each contested issue, articulate the reason for your position and counter any reasons against it that will be offered by the other side.
- Be as flexible as possible with scheduling a hearing.

### **Conclusion**

IEERB encourages all practitioners to become familiar with the law and rules regarding collective bargaining, and to be prepared for – and take seriously – discussion, bargaining, mediation, and fact-finding.



### **Bargaining and Impasse Glossary**

**Bargain Collectively** – The performance of the mutual obligation of the school employer and the exclusive representative to meet at reasonable times to negotiate in good faith concerning the mandatory subjects of bargaining; and to execute a written contract, incorporating any agreement relating to the mandatory subjects of bargaining. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other. See IC 20-29-2-2; IC 20-29-6-1; IC 20-29-6-4; and IC 20-29-6-6.

**Bargaining Unit** – A group of school employees that the employer has recognized, or IEERB has certified, as appropriate to be represented by an employee organization for the purpose of collective bargaining. See IC 20-29-5-1; 560 IAC 2-2-1.

**Collective Bargaining (mandatory subjects of)** – Salary; wages; and salary and wage related fringe benefits, including accident, sickness, health, dental, vision, life, disability, retirement benefits, and paid time off as permitted to be bargained under IC 20-28-9-11. Salary and wages include the amounts of pay increases available to employees under the salary scale adopted under IC 20-28-9-1.5, but do not include the teacher evaluation procedures and criteria, or any components of the teacher evaluation plan, rubric, or tool. See IC 20-29-6-4.

**Collective Bargaining Agreement** – A written agreement encompassing all agreed-upon mandatory subjects of bargaining that has been ratified by the governing body of the school employer and the exclusive representative. A CBA may not extend past the end of a state budget biennium. Once a CBA has been ratified, it must be sent to IEERB and posted on the school employer's website. See IC 20-29-6; 560 IAC 2-5-1.

**Committee Appointments** – The percentage of teacher positions the exclusive representative may appoint to serve on a statutory or locally created school or district wide committee may not exceed the percentage of teachers in the school employer who are members of the exclusive representative. Committees under this section may not address subjects of bargaining. This section does not apply to the bargaining team for the exclusive representative. See IC 20-29-5-7.

**Deficit Financing** – Actual expenditures exceeding the employer's current year actual general fund revenue for a budget year. It is unlawful for a school employer to enter into any agreement that would place it in a position of deficit financing. A contract that provides for deficit financing is void to that extent, and an individual teacher's contract executed under the contract is void to that extent. In determining deficit financing during fact-finding, the fact-finder and the Board will compare the cost of the proposal and non-bargaining unit member costs from the general fund with general fund revenue. *Nettle Creek Sch. Corp.*, F-11-02-8305, at 14 (IEERB Bd. 2012), *on*

*appeal*, Cause No. 49A02-1402-PL-78; *Carmel Clay Schs.*, F-12-01-3060, at 2 (IEERB Bd. 2013), *on appeal*, Cause No. 49D05-1312-PL-045234. Such determinations will be made on the state fiscal year, from July 1 – June 30. *Carmel Clay Schs.*, F-12-01-3060, at 2. See IC 20-29-2-6 and IC 20-29-6-3.

**Discussion** – The performance of the mutual obligation of the school employer through its superintendent and the exclusive representative to meet at reasonable times to discuss, provide meaningful input, or exchange points of view, with respect to the following subjects: 1) curriculum development and revision; 2) textbook selection; 3) teaching methods; 4) hiring, evaluation, promotion, demotion, transfer, assignment, and retention of certificated employees; 5) student discipline; 6) expulsion or supervision of students; 7) pupil/teacher ratio; 8) class size or budget appropriations; 9) safety issues for students and employees in the workplace, except those items required to be kept confidential by state or federal law; and 10) hours. The obligation to discuss does not require either party to enter into a contract, agree to a proposal, or make a concession related to the mandatory subjects of discussion. See IC 20-29-2-7; IC 20-29-6-7; and IC 20-29-6-8.

**Employee Rights** – School employees may: form, join, or assist employee organizations; participate in collective bargaining with school employers through representatives of their own choosing; and engage in other activities, individually or in concert; to establish, maintain, or improve salaries, wages, salary and wage related fringe benefits, and other matters set forth in IC 20-29-6-4 and IC 20-29-6-5. Additionally, school employees may not be required to join or financially support a school employee organization through the payment of fair share fees, representation fees, professional fees, or other fees. See IC 20-29-4-1 and IC 20-29-4-2.

**Employer responsibilities and authority** – School employers have the responsibility and authority to manage and direct on behalf of the public the operations and activities of the school corporation to the full extent authorized by the law, including but not limited to the following: 1) direct the work of the school employer's employees; 2) establish policy through procedures established in IC 20-29-6-4 and IC 20-29-6-5; 3) hire, promote, demote, transfer, assign, and retain employees; 4) suspend or discharge employees in accordance with applicable law through procedures established under state law; 5) maintain the efficiency of school operations; 6) relieve employees from duties because of lack of work or other legitimate reason through procedures established in IC 20-29-6-4, IC 20-29-6-5, and IC 20-29-6-7; and 7) take actions necessary to carry out the mission of the public school as provided by law. See IC 20-29-4-3.

**Exclusive Representative** – The school employee organization that has been certified by IEERB, or voluntarily recognized by the school employer, to be the exclusive representative of the school employees in the appropriate bargaining unit, or persons authorized to act on the organization's behalf. See IC 20-29-2-9.

**Expiration (of Collective Bargaining Agreement)** – Collective bargaining agreements may not extend past the end of a state budget biennium. Upon the expiration of the current contract that is in effect, the school employer shall continue under the terms of the current contract that is in effect, with no increase or increment in salary, wages, or benefits for any bargaining unit employee until a new contract is executed, unless continuation would put the school employer in a position of deficit financing due to a reduction in the employer's actual general fund revenue or an increase in an employer's expenditures when the expenditures exceed the current year actual general fund revenue. If an agreement has not been reached on the items to be bargained collectively by November 1, as provided in IC 6-1.1-17-5, the parties shall continue the terms of the current contract that is in effect, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this period, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute. The only parts of the contract that must continue are those contained in the contract and listed in IC 20-29-6-4. See IC 20-29-6-4.7; IC 20-29-6-16.

**Fact-Finder** – The individual appointed by IEERB to conduct the fact-finding process.

**Fact-Finding** – Mandatory impasse process that will provide a final solution when parties cannot timely settle their collective bargaining agreement on their own or with the help of mediation. The fact-finder, appointed by IEERB, will conduct an investigation, which may include a public hearing, into the parties' Last, Best Offers. The fact-finder must then select one party's LBO as the binding contract terms. The fact-finder's order is restricted to only those items permitted to be bargained and included in the collective bargaining agreement. The order must not put the employer in a position of deficit financing and may not impose terms beyond those proposed by the parties in their LBOs. The fact-finder shall consider the following factors: public interest; the financial impact on the school employer and whether any settlement will cause the school employer to engage in deficit financing; past memoranda of agreements and contracts between the parties; and comparisons of wages and hours of the employees involved with wages of other employees working for other public agencies and private concerns doing comparable work, giving consideration to factors peculiar to the school employer. The parties will split the cost. Fact-finding may not last longer than 15 days. See IC 20-29-6-15.1; IC 20-29-8; 560 IAC 2-4.

**Financial Consultant** – The individual appointed by IEERB to aid the fact-finder or the Board in the financial aspects of the fact-finding or appeal process.

**Impasse** – When the parties are unable by themselves to timely settle and ratify a collective bargaining agreement. IEERB shall declare impasse after September 30 if either the parties notify IEERB of impasse, or the parties are, or are supposed to be under the terms of their CBA, in collective bargaining

for all or part of a contract and have not submitted a ratified CBA to IEERB. See IC 20-29-6-13 and 560 IAC 2-4-1.

**Last, Best Offer (LBO)** – The contract terms a party would like to have as the parties' CBA, as well as supporting documents and information. If parties at impasse do not ratify a CBA during mediation, they must exchange LBOs and send a copy to IEERB. An IEERB-appointed fact-finder will conduct an investigation, which may include a public hearing, into the parties' LBO. The fact-finder must then select one party's LBO as the binding contract terms. LBO requirements for any given year will be posted on IEERB's website prior to October 1<sup>st</sup> and will be sent to parties upon declaration of impasse. See IC 20-29-6; IC 20-29-8; 560 IAC 2-4.

**Mediation** – An attempt by an impartial third party, called a mediator, to help parties settle disputes. Mediation services are provided by IEERB. Mediation is mandatory in impasse cases. In impasse cases, mediation will last up to 30 days, the cost will be split by the parties, and the mediation will result in either a ratified collective bargaining agreement or the exchange by the parties of their LBOs. See IC 20-29-6-13; 560 IAC 2-4-3; 560 IAC 2-4-3.1.

**Mediator** – An impartial third party who helps school employers and their exclusive representatives settle disputes.

**Negotiator** – An individual who represents the employer or exclusive representative in collective bargaining negotiations to reach an agreement. Often committees or teams represent each party, and one of the committee members acts as chief negotiator or spokesperson for the group.

**Ratification** – Formal approval by the governing body of the school employer and the exclusive representative of a tentative agreement, generally a newly negotiated collective bargaining agreement. Agreements reached through collective bargaining under IC 20-29 are binding as a contract only if ratified by the governing body of the school employer and the exclusive representative. See IC 20-29-6-6.

**School Corporation** – A local public school corporation established under Indiana law. The term includes any: school city, school town, school township, consolidated school corporation, metropolitan school district, township school corporation, county school corporation, united school corporation, community school corporation, and public career and technical education center or school or school for children with disabilities established or maintained by two or more school corporations. See IC 20-29-2-12.

**School Employee** – A full-time certificated person in the employment of a school employer, but not including supervisors, confidential employees, employees performing security work, and non-certificated employees. A certificated employee means a person whose contract requires that the person hold a license or permit from the division of professional standards of the department of education under IC 20-28; or who is employed as a teacher by

a charter school established under IC 20-24. See IC 20-29-2-4 and IC 20-29-2-13.

**School Employee Organization** – An organization that has school employees as members and one of its primary purposes is representing school employees in dealing with their school employer. See IC 20-29-2-14.

**School Employer** – The governing body of a school corporation or charter school established under IC 20-24, and a person or persons authorized to act for the governing body of the school employer in dealing with its employees. Governing body is defined as township trustee and the township board of a school township; a county board of education; a board of school commissioners; a metropolitan board of education; a board of trustees; any other board or commission charged by law with the responsibility of administering the affairs of a school corporation; or the body that administers a charter school established under IC 20-24. See IC 20-29-2-10 and IC 20-29-2-15.

**Scope (of bargaining)** – The range of issues made bargainable by IC 20-29-6.

**Term (of a CBA)** – The dates a collective bargaining agreement is in effect. Collective bargaining agreements may not extend past the end of a state budget biennium, which occurs on June 30 of odd-numbered years (e.g., June 30, 2015). See IC 20-29-6-4.7(b).